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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/775,608

02/10/2004

Wanda Booth

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EXAMINER

GUIDOTTI, LAURA COLE

ART UNIT

PAPER NUMBER

1744

MAIL DATE

DELIVERY MODE

06/22/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/775,608	<b>Applicant(s)</b> BOOTH ET AL.	
	<b>Examiner</b> Laura C. Guidotti	<b>Art Unit</b> 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date, _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>51305,21004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of species 2, Figures 6-7 in the reply filed on 09 April 2007 is acknowledged. This is found persuasive, and Examiner will examine all of claims 1-20. The election requirement has been withdrawn by the Examiner.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-2 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Janssen, US 4,856,136.

Janssen discloses the claimed invention including a blade (20) having a front face and a back face interconnected and surrounded by an edge surface (unlabeled, shown in Figure 1), the edge surface including a handle edge surface (at 22) and a leading-end edge surface (unlabeled, see Figure 1, opposite to surface 22), and side edge surfaces interconnecting the end edge surfaces (unlabeled, see Figure 1), and an applicator pad (30a) including a plurality of bristles (bristles are the flocked fibers/filaments; Column 8 Lines 1-5, Column 6 Lines 17-43) extending outwardly from

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the faces and side edge surfaces and the leading-end edge surface (Figures 4-5).

Regarding claim 2, the bristles are directional (Column 6 Lines 39-41). Regarding claim 20, there is a handle (14) extending from the handle-end edge surface and integrally formed with the blade (Column 5 Lines 11-20, see Figure 1) wherein the handle is thicker than the blade (see Figure 1).

3. Claims 1-2, 5, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Sipple et al., US 4,509,223.

Sipple et al. disclose the claimed invention including a blade (24, 34) having a front face and a back face interconnected and surrounded by an edge surface (unlabeled, shown in Figures 1-6), the edge surface including a handle edge surface (portion most adjacent 22 or 32) and a leading-end edge surface (unlabeled, see Figures 1-6, opposite to 22 or 32), and side edge surfaces interconnecting the end edge surfaces (unlabeled, see Figures 1-6), and an applicator pad (28, 38) including a plurality of bristles (28) extending outwardly from the faces and side edge surfaces and the leading-end edge surface (Figures 1-3). Regarding claim 2, the bristles are directional (as shown in Figures 1-3). Regarding claim 5, the blade is resilient (Column 5 Lines 5-9). Regarding claim 20, there is a handle (56) extending from the handle-end edge surface and integrally formed with the blade (Figures 10-13, Column 5 Lines 15-21) wherein the handle is thicker than the blade (Figures 10-13).

4. Claims 1-4 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Bensussan et al., US 2004/0143923.

Bensussan et al. disclose the claimed invention including a blade (14) having a front face and a back face interconnected and surrounded by an edge surface (unlabeled, shown in Figures 3-5), the edge surface including a handle edge surface (at 40) and a leading-end edge surface (unlabeled, see Figures 4-5, opposite to surface 40), and side edge surfaces interconnecting the end edge surfaces (unlabeled, see Figures 3-5), and an applicator pad (pad constitutes bristle tufts 16) including a plurality of bristles (16) extending outwardly from the faces and side edge surfaces and the leading-end edge surface (Figures 3-5). Regarding claim 2, the bristles are directional (as shown in Figures 3-5). Regarding claim 3, the bristles adjacent to the front and back faces and adjacent the side edge surfaces being slanted toward the handle-end surface (as shown in Figures 4-5). Regarding claim 4, bristles adjacent a leading edge surface extend away from the handle end surface (as shown in Figures 4-5). Regarding claim 9, the thickness of the blade increases between the leading-end edge surface and the handle-end surface (at the centralmost part 30, Figures 3-5).

5. Claims 12-14 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Cupp et al., US 4,127,911.

Cupp et al. disclose the claimed invention including a blade (18) having a front face and a back face interconnected and surrounded by an edge surface, the edge surface including a handle-end edge surface and a leading-end edge surface and side edge surfaces interconnecting the edge surfaces (as shown in Figures 1-3), a handle (12), an adapter (50) for connection to a distal end of the handle and presenting a threaded connector (see Figures 3, 7, 8), and an applicator pad (11) including a plurality

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of bristles (15) extending outwardly from the faces and edge surfaces and said leading-end edge surface. Regarding claim 13, the thickness of the blade is less than a thickness of the handle (see Figure 4). Regarding claim 14, the blade is releasibly connected to the handle (see Figures 1-2, via 25). Regarding claim 18, a plurality of differently sized blades and corresponding applicator pads wherein each of the blades is releasibly connected to the handle (Column 5 Line 32 to Column 6 Line 2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Janssen, US 4,856,136 as applied to claim 1 in view of Cupp et al., US 4,134,173.

Janssen discloses all elements mentioned above, however does not disclose that bristles adjacent to the front and back faces and adjacent the side edge surfaces being slanted toward the handle-end surface.

Cupp et al. teaches a paint applicator that has a blade (13) and an applicator pad (12) including a plurality of directional bristles (30; Column 4 Lines 12-15), wherein the bristles are slanted toward a handle end surface of the blade (in the configuration shown in Figures 12 and 14), so that the bristles are configured in a direction appropriate to the intended surface that is to be liquid coated (Abstract).

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify the directional bristles of Janssen so that the bristles adjacent to the front and back faces and adjacent the side edge surfaces are slanted toward the handle-end surface, as Cupp et al. teach, so that bristles are configured in a direction appropriate to the intended surface that is to be painted or coated.

7. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Janssen, US 4,856,136 as applied to claim 1 in view of Gruns, US 4,499,627.

Janssen discloses all elements mentioned above, however does not disclose that the blade is formed from at least two different materials or that the blade is resilient.

Gruns teaches a paint applicator that has an integral handle and blade (1) that are both formed of at least two different materials (3, 4; metal and plastic, Column 2 Lines 2-8) so that they are flexible, resilient, and won't scratch surfaces that come into contact with the handle and blade (Column 1 Lines 10-19, 34-37). Regarding claim 7, the blade (portion of 1 where 2 is located) includes a first planar member defining an

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edge and being formed of a first material (3) and a second planar member extending from the edge of the first planar member (4) and defining the first and second side faces and the side surfaces (Figure 3) wherein the second planar member being formed from a second material and the second material being more elastic than the first material (Column 1 Lines 30-34 implies that the metal is more elastic than the plastic).

It would have been obvious for one of ordinary skill in the art at the time of the invention to substitute the integral blade and handle of Janssen for one that is made from at least two different materials, as Gruns teaches, so that the handle and blade are both flexible and will not scratch other surfaces that it contacts.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Janssen, US 4,856,136 as applied to claim 1 in view of Shehow et al., US 6,101,658.

Janssen discloses all elements mentioned above, however does not disclose that that the applicator pad includes a non-absorbent fabric backing fixedly associated with the blade.

Shehow et al. teach a paint applicator pad (118) fixedly as associated with the blade (120; "fixedly associated" when they are assembled, see Figures), and the pad includes a non-absorbent fabric (134; nonwoven composite or a thermoplastic, Column 5 Lines 28-47) so that bristles can be sewn and attached through it in so that the non-absorbent fabric is acting as a support to the bristles (Column 5 Lines 28-47).

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify the applicator and bristle structure of Janssen, so that the applicator pad includes a non-absorbent fabric backing fixedly associated with the blade, as



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taught by Shehow et al., so that the non-absorbent fabric can still provide support the bristle structure regardless of the amount of paint that is used.

9. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Janssen, US 4,856,136 as applied to claim 1 in view of Ginter, US 3,353,203.

Janssen discloses all elements mentioned above, however does not disclose that the thickness and rigidity increase between the leading-end edge surface and the handle-end edge surface and that the rigidity of the blade changes between side edge surfaces.

Ginter teaches a paint applicator (12) and a blade (18), wherein the thickness of the blade increases between the leading-end edge surface and a handle-end surface (see Figure 2), the rigidity of the blade increases between the leading-end edge surface and the handle-end surface (Column 2 Lines 42-70; Column 3 Lines 7-13). In addition, the rigidity of the blade changes between the side edges surfaces (as transverse ribs 48 increase the rigidity of the blade, Column 2 Lines 7-9). This is shaped so that it provides flexibility comparable to an ordinary brush (Column 3 Lines 11-13).

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify the shape and rigidity of the blade of Janssen, so that the thickness and rigidity increase between the leading-end edge surface and the handle-end edge surface and that the rigidity of the blade changes between side edge surfaces, as Ginter teaches, so that the blade provides a flexibility to the applicator comparable to an ordinary paint brush.

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10. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cupp et al., US 4,127,911 as applied to claim 12 in view of Martin, US 3,936,198.

Cupp et al. disclose all elements mentioned above, however does not disclose that the pad includes a loop portion and the apparatus includes a hook member insertable in the loop portion.

Martin teaches a bristled apparatus that has two ends (5, 6) wherein one of these ends is part of the bristled portion and is a loop portion (5) and the other end is a hook member (6) capable of being inserted through the loop portion. These ends serve as handles to allow manipulation of the bristled device and so that the device can be freely hung or stored (as shown in Figure 5) when not in use.

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify the pad of Cupp et al. to further include a looped portion and the apparatus to include a hook member insertible into the loop portion, as Martin teaches, so that a user can have additional means to handle, manipulate, grip, store, and orient the applicator device.

11. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Janssen, US 4,856,136 as applied to claim 1 in view of Hollje, US 5,054,661.

Janssen discloses all elements mentioned above, however does not include that the apparatus further comprises a container.

Hollje teaches a container for storing paint (11), the container defining an inwardly angled wiping lip (19, 22) and a handle releasibly engageable with the

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container (as shown in Figure 10; paint brush handles are releasibly engageable with the container).

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify Janssen by further including a container for storing paint having a wiping lip and a handle releasibly engageable with the container, as Hollje teaches, so that a user can have a means with which to have paint readily accessible and stored nearby while applying paint.

12. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cupp et al., US 4,127,911 as applied to claim 12.

Cupp et al. disclose all elements mentioned above, however do not disclose that the blade is formed, at least in part, from polyethylene terephthalate-glycol.

It would have been obvious to one having ordinary skill in the art at the time of the invention to form at least part of the blade from polyethylene terephthalate-glycol, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. In re Leshin, 125 USPQ 416.

13. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cupp et al., US 4,127,911 in view of Martin, US 3,936,198 and Hollje, US 5,054,661.

Cupp et al. disclose all elements previously mentioned above, however do not include that the pad includes a loop portion and the apparatus includes a hook member insertable in the loop portion or that the apparatus further includes a container with an inwardly angled wiping lip and a handle releasibly engageable with the container.

Martin teaches a bristled apparatus that has two ends (5, 6) wherein one of these ends is part of the bristled portion and is a loop portion (5) and the other end is a hook member (6) capable of being inserted through the loop portion. These ends serve as handles to allow manipulation of the bristled device and so that the device can be freely hung or stored (as shown in Figure 5) when not in use.

Hollje teaches a container for storing paint (11), the container defining an inwardly angled wiping lip (19, 22) and a handle releasibly engageable with the container (as shown in Figure 10; paint brush handles are releasibly engageable with the container).

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify the pad of Cupp et al. to further include a looped portion and the apparatus to include a hook member insertible into the loop portion, as Martin teaches, so that a user can have additional means to handle, manipulate, grip, store, and orient the applicator device and further it would have been obvious for one of ordinary skill in the art at the time of the invention to modify Cupp et al. by further including a container for storing paint having a wiping lip and a handle releasibly engageable with the container, as Hollje teaches, so that a user can have a means with which to have paint readily accessible and stored nearby while applying paint.

### ***Conclusion***

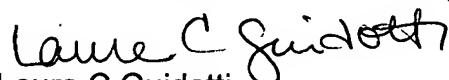
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Guidotti whose telephone number is (571) 272-

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1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Laura C Guidotti  
Patent Examiner  
Art Unit 1744

lcg